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The incidence of the Female Child Soldier and the International Criminal Court

Eng Aja Eze Foundation

Keynote speech

4 June 2012

New York

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Excellencies, Ladies and Gentlemen,

Allow me to start by thanking the Eng Aja Eze Foundation for inviting me to address you today, on the occasion of the International Day of the African Child, on the critical issue of girl child soldiers, and the role of the International Criminal Court.

As the Special Representative for Children and Armed Conflict of the UN Secretary General Radhika Coomaraswamy indicated while testifying as an expert witness in Lubanga case at the ICC: *“girls play multiple roles in conflict, including combat, pottering, scouting but also sexual slavery [...] We need to draw attention to the roles girls play and the need to protect them in every context.”*

Indeed, one of the most fundamental aspects of the crime of utilizing child soldiers in armed conflicts is its gender aspect. According to estimations, there are 250.000 child soldiers in the world today; 40% of these children.

The main functions of these girls are to act as soldiers but also as “wives” of male soldiers, a mere euphemism for sex slaves. Girls are, indeed, more susceptible to being abused as child soldiers due to the multiplicity of their assigned roles, and especially when they are used as sex slaves.

This vulnerability, deeply linked with social gender representations, is particularly reflected in the stigmatization girls soldiers may face during the reintegration process.

Indeed, sexually exploited girls are often seen as being “immoral” or “unclean” by the members of their community.

As UNICEF noted in their submissions on reparations to the Judges in the Lubanga case, many girls who have been through these atrocities try to keep their pasts hidden to avoid stigmatization in their communities. This prevents victims from being taken into account to see their suffering addressed in an attempt to heal. It also creates significant outreach problems for ending the impunity of perpetrators.

The situation in Sierra Leone provides an illuminating example of why we need to focus more carefully on girl soldiers. The Disarmament, Demobilization and Reintegration (DDR) programs in Sierra Leone, carried out in the aftermath of the armed conflict, were not designed with a specific focus on girl soldiers. The programs often required the child soldiers to hand in a weapon, a process which excluded those who did not carry a gun. According to UNICEF, at the end of the disarmament and demobilization in Sierra Leone, 6,845 children were demobilized, of which 547 were girls, but a good number of the girls were left behind and did not go through the DDR program itself.

As many observers have indicated, this lack of focus results in lack of female participation in official reintegration programs, and as a consequence, many girls who leave the armed forces end up with little support, no financial means and forced into situations where they are trading sex for food, shelter or money, simply to survive.

I would like to talk to you today about what the recent international developments made to address this issue, and how the Office of the Prosecutor of the ICC has been working to ensure that never again, the plight of these girls is forgotten or trivialized; that they are not invisible from the scope of the law and the reintegration programs.

1) INTERNATIONAL DEVELOPMENTS REGARDING GENDER CRIMES AND THE ROME STATUTE

The recognition of “gender violence” or “gender crimes” as such is relatively recent development in international law. Remember that Robert Jackson, the Chief Prosecutor of the Nuremberg Tribunal, decided not to present sexual crimes in the case against Nazi Leaders.

It was only in the early 1990s that there was a greater emphasis on gender crimes. This impetus was furthered with the efforts of obtaining accountability in the mid-90s for atrocities committed against women during the conflict in the former Yugoslavia, which paved the way of the establishment of how rape and other forms of sexual violence could be instrumentalised in a campaign of genocide. This equally contributed to the expansion of the understanding of sexual or gender violence as war crimes and crimes against humanity.

But perhaps the most groundbreaking decision advancing gender jurisprudence worldwide was the Akayesu judgment delivered by the Trial Chamber of the International Criminal Tribunal for Rwanda on 2 September 1998. For the first time in history, rape was explicitly recognized as an instrument of genocide. As described by the ICTR in the Akayesu case, rape is used to “kill the will, the spirit, and life itself”. The decision by the ICTR Chamber provided a definition of rape as well, – “a physical invasion of a sexual nature under circumstances which are coercive” – placing gender crimes in a larger context. The evolution of the international criminal law regarding gender crimes has continued in the recent years. The Special Court for Sierra Leone’s RUF trial judgement in 2009 constitutes a landmark, as for the first time in history, an international or internationalized tribunal has brought convictions regarding crimes against humanity of sexual slavery and forced marriage as an inhumane act.

The Rome Statute of the International Criminal Court is a result of these recent developments in international law and progress in the human rights field, throughout which the international community as a whole, composed of representatives of

governments, NGOs, international institutions, have recognised gender violence and gender crimes as crimes of international concern.

Gender related violence or “gender crimes” is a firmly established concept in the Rome Statute. Under Article 7(1)(h), persecution against any identifiable group or collectivity on grounds of gender could constitute a crime against humanity if committed in connection with other types of crimes against humanity or other crimes under the jurisdiction of the Court. Various provisions of the Statute prescribe what can be characterized as gender crimes. Rape, sexual slavery, enforced prostitution, forced pregnancy and enslavement, including trafficking, are some of these characterizations which can be categorized as war crimes and/or crimes against humanity.

Therefore, and although the forms of brutality and violence committed against girls and women during armed conflicts are in many respects unspeakable, we now have the strength of the law, the Rome Statute, to give voice and language to these crimes.

2) OTP STRATEGIES, POLICIES AND CASES

The Office of the Prosecutor, within its mandate prescribed by the Statute, is engaged on gender related issues in multiple ways. Article 54(1)(b) of the Statute specifically provides that the Prosecutor shall “*take into account the nature of the crime in particular where it involves sexual violence, gender violence, or violence against children*”. Sensitivity towards gender issues is all the more prescribed in relation to the protection of witnesses and victims. According to Article 68(1) of the Statute, “*the Court...shall have regard to all relevant factors, including gender and the nature of the crime, in particular, where the crime involves sexual or gender violence or violence against children.*”

Additionally, Article 42(9) of the Statute requires the Prosecutor to appoint advisers with legal expertise on specific sexual and gender violence. I am proud to have been the Office’s focal point for gender related issues since the start of my mandate as Deputy Prosecutor. The Office also established a unit, the Gender and Children Unit, comprised of advisers with legal and psycho-social expertise to deal specifically with gender and children issues. The GCU advises the Prosecutor directly and provides support to the Office’s divisions, from pre-analysis through to prosecution phases.

The OTP has also consistently endeavoured to ensure that its staff receives the proper training to integrate a “gendered” perspective into its investigations and prosecution, whilst at the same time presenting gendered aspects of conflict in connection with the contextual elements of the crimes as defined by the Rome Statute. Our investigators and lawyers receive specialised training on the legal framework and methods for conducting gender crime related interviews.

The OTP's sensitivity toward gender aspect of crimes is well reflected in its investigation into cases regarding child soldiers. The OTP has brought charges of enlistment, conscription and the use of children to participate actively in hostilities against seven individuals and across four cases. The first trial before the Court against Thomas Lubanga Dyilo, was a landmark in the international criminal law history. With the verdict, enlistment and conscription of children under the age of 15, for the first time, was internationally criminalized. The case also had a very strong gender aspect, a subject I will further analyze in the latter parts of my speech.

Similar sensitivities were also taken into consideration in the Kony and Katanga/Ngudjolo cases. Our investigation into the situation in Uganda showed not only how the Lord's Resistance Army systematically abducted girls for sexual enslavement and rape, but also how the LRA leader, Joseph Kony, controlled all aspects of how girls are abducted, distributed to LRA commanders, and enslaved. He allocated abducted girls as a reward to the commanders, to be used as sex slaves. Kony himself has had as many as fifty abducted girls in his household at one time--girls who were enslaved and raped. The LRA attempted to mask their criminal acts by calling the enslaved girls "wives" or "sisters." Today, such crimes are still continuing in Uganda. Amid the civilians that were abducted from CAR, Sudan, and the DRC pursuant to orders by Joseph Kony to abduct one thousand new "recruits," many women continue to be used as sexual and domestic slaves.

With respect to the case against Germain Katanga and Mathieu Ngudjolo Chui, the Prosecution also presented charges related to gender crimes, namely, sexual slavery and rape, both as crimes against humanity and war crimes as well as using child soldiers as a war crime. Both men are charged with ordering the attack upon the village of Bogoro, in Ituri, on 24 February 2003. Hundreds of civilians were massacred during the attack, civilian's residences were looted and destroyed, and women and girls were raped. According to the evidence collected, some women, who were captured at Bogoro and spared by hiding their ethnicity, were taken to FNI and FRPI camps, after being undressed or raped upon their capture. Once there, they were given as "wives" to their captors or kept in the camp's prison. The women detained in these prisons were repeatedly raped by soldiers and commanders alike.

The use of child soldiers was also included in the arrest warrant for Bosco Ntaganda, and as you may be aware, we recently applied for a new arrest warrant to include charges of rape, sexual slavery, murder, persecution, intentional attack against civilians and pillaging.

Our Office has taken very seriously the crimes committed against children in the context of armed conflict and in so doing we believe we are contributing to not only

accountability for these crimes but also to the larger recognition of the legal rights of children, including the right to a childhood free from violence, coercion and fear.

Additionally, these cases involve gender related crimes of sexual slavery and rape, and crimes of enlisting and conscripting child soldiers. These experiences clearly illustrate that these two heinous crimes go hand in hand, especially when they involve female children.

3) OTP INTERACTION WITH FEMALE CHILD SOLDIERS

During the investigation which resulted in the arrest and trial of Thomas Lubanga Dyilo, the Office of the Prosecutor interacted with five female former child soldiers. At the time of interview, some of them were very fragile and emotional, whereas one was rather adamant not to be considered as a victim. All of them had physical health complaints – chronic and acute pains, urinary infections and experienced trouble sleeping. Out of five of them, two suffered from severe avoidance symptoms.

The Office of the Prosecutor is cognizant of the fact that the victims and witnesses it interacts with, especially those of sexual violence crimes and children, will in most cases be very fragile. During preparation for deployment to the field to conduct interviews of female child soldiers, the Office addresses issues in order to guarantee maintaining their dignity, physical and psychological well-being.

It is the practice of the Office to obtain the consent of parents or care-givers of children and that practice was respected before any interaction with the female child soldiers interviewed. Bearing in mind that they were children and because of the unfortunate experiences, the Office offered them support right from the initial stage of our interaction; they were entitled to attend interviews with an accompanying person of their choice.

To ensure that each child was in a fit condition to go through the interview process without re-traumatization, all five of them went through a psycho-social pre-interview assessment conducted by a psycho-social expert. At the conclusion of the assessment, the expert made a determination of the child's suitability to be interviewed. This determination was final and was respected by investigators. If approval is given for the interview to proceed, the expert either sits in the interview to provide support to investigators and/or the children or makes crises interventions if and when necessary.

During our interaction, certain fundamental principles, including respecting the principle of confidentiality and non-exposure of the children, had to be thoroughly respected. As well as boys, girl child soldiers may have committed crimes during the period they were with the fighting forces, and the feeling of guilt causes reluctance in

them to give a narration of their experiences. In our interaction, it is important to explain Article 26 of the Rome Statute and give them the assurance that they will not be prosecuted.

The Victims and Witnesses Unit in consultation with the Office of the Prosecutor, has developed both an Initial Response System and Secondary Response System which witnesses can trigger in case they feel threatened and are in need of protection.

In addition, the Court provides various forms of assistance to witnesses and a referral procedure has been set up between the VWU and the OTP whereby witnesses in need of assistance - especially medical and psychological interventions - are referred to VWU for provision of the assistance.

It is our strong belief that justice cannot be done in or out of the courtroom if the voices of female child soldiers are not heard.

Inside the courtroom, it is important for the gender component of conscription and enlisting to be mentioned in order to highlight the different dimensions of those crimes and their consequences, thereby participating in the determination of the whole truth.

We also have to focus on the planning, designing and implementing of prevention, demobilization and reintegration programs so that the unique needs of girls are taken into consideration from the inception. Their voices must be heard so that the international community understands their story and their plight as they look for ways to make a contribution, do something meaningful and productive with their life, and try to make up for the harm inflicted on them through any possible means of reparations.

4) THE LUBANGA CASE AS A LANDMARK

As previously stated, the Lubanga verdict was a landmark decision in relation to gender crimes and child soldiers. During our opening statement in January 2009, we presented the gender dimensions of the crime of enlisting and conscripting children under the age of fifteen years. The evidence showed how Lubanga instrumentalised sexual violations to subject child soldiers of both sexes to his will, and made them tools to further his own violent goals.

In the camps, child soldiers were exposed to sexual violence perpetrated by Lubanga's men. In the training camps, girl soldiers were the daily victims of rape by the commanders. Girl soldiers, some aged twelve years old, were used as cooks and fighters, cleaners and spies, scouts, and sexual slaves.

One minute they would carry a gun; the next minute, they would serve meals to the commanders; the next minute, the commanders would rape them.

They were killed if they refused. One child soldier became severely traumatised after killing a girl who refused to have sex with a commander. Our evidence showed that as soon as the girls' breasts started to grow, Lubanga's commanders could select them as their forced "wives" and transform them into their sexual slaves. One of our witnesses described how he observed daily examples of his commanders raping girl soldiers.

Their right to a childhood, to safety and protection, to physical integrity, education, to exercising their reproductive rights and health and sexual autonomy, were denied and destroyed.

Although the Prosecution did not include specific charges related to sexual violence in the Lubanga case, it did make it a priority to lead and elicit evidence of sexual abuse and violence suffered by the female child soldiers within the UPC/FPLC military.

The Prosecution called a female child soldier who gave a graphic account of the prevalence of the gender based violence that existed in the UPC and recounted how she was also the subject of gender based harm.

As we demonstrated during the trial, rape and other forms of sexual violence were integral to the enlistment and conscription of girls by the UPC, and an ongoing component of the ways in which girls and young women were used to participate actively in hostilities.

Although gender crimes were not distinctly present in the final verdict rendered by the Judges, Judge Odio-Benito provided a separate opinion, agreeing with the Prosecution that gender crimes were embedded in the recruiting of children and in their use in hostilities: *"It becomes irrelevant, therefore, if the prosecution submitted the charges as separate crimes or rightfully included them as embedded in the crimes of which Mr Lubanga is accused. The harm suffered by victims is not only reserved for reparations proceedings but should be a fundamental aspect of the Chamber's evaluation of the crimes committed"*. Judge Odio-Benito found that the invisibility of sexual violence in the legal concept leads to discrimination against the victims of recruitment.

It is our responsibility to present the gender crimes suffered by the most vulnerable. During the course of the trial, the Office has made it its mission to ensure that Thomas Lubanga Dyilo be held criminally responsible for the atrocities committed against those little girl soldiers, when he enlisted and conscripted them to be used as sexual prey, while also using them in combat.

In the International Criminal Court, children, including girls, will not be invisible. It is our hope that the Lubanga ruling could change the life of these girls; never again should they be left out of the assistance provided by demobilization programmes. In this sense, the harm they suffered from has been remarkably mirrored in the submissions on reparations commanded by the Judges and introduced by various participants in the case, including the OPCV, ICTJ, UNICEF and Women's Initiatives for Gender Justice.

5) CONCLUSION

In order to understand the effectiveness of the Court, one has to assess the impact it has over the world. Even before the verdict, the Lubanga trial has helped trigger debates on child recruitment in countries like Colombia or Sri Lanka, and child soldiers have been released in Nepal. The Special Representative of the UN Secretary-General, Rhadika Coomaraswamy factored in such potential and used it as a tool to campaign around the world, and secure additional releases. This is an example of how to use the law to prevent crimes and change the lives of millions. The impact of the Lubanga case, as well as other cases before the Court, however, depends on the subsequent actions of a wide range of actors.

One last, but definitely not the least, point I want to make is about the effects of armed conflicts and international crimes over the education of children.

Sheikha Mozah of Qatar, UNESCO Special Envoy for Basic and Higher Education, clearly stated that the world cannot continue to ignore the impact that armed conflict and international crimes have on education. Staff at Qatar-based Education Above All, an organisation which she chairs, analysed the information collected by the Prosecutor in the Lubanga case.

Their findings show how Thomas Lubanga Dyilo's crimes interrupted, delayed and denied the right to education to Ituri children. In addition to the children abducted to become child soldiers, other children stopped going to school for fear of being abducted. Because of Mr. Lubanga Dyilo, these children lost out on their education.

And Ituri is just one example of the devastating effect that international crimes have on education: according to the Education for All Report published by UNESCO in 2011, 28 million children of primary school age in conflict-affected poor countries are out of school. These children need to be included in the education system as education is the most effective way of reintegrating them back into their communities.

We have to reach out and help these children, the ones who are affected the most by the vicious nature of armed conflicts.

As I have repeatedly said, the crimes committed towards female child soldiers need to be analyzed specifically. Our focus should shift from “children with arms” to “children who are affected by the arms” in the context of crime of enlisting and conscripting child soldiers. I, as the new Prosecutor of the ICC, will make sure that such crimes and victims will no longer be ignored and perpetrators will face justice.

Thank you.